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BOOK REVIEWS

The Constitutional History of New York, from the Beginning of the Colonial Period to the Year 1905, Showing the Origin, Development, and Judicial Construction of the Constitution. By CHARLES Z. LINCOLN. (Rochester, N. Y.: Lawyers' Coöperative Publishing Company. 5 vols. 1906.)

Constitutional law, as a distinct subject of American jurisprudence, has frequently been treated by some of our greatest law writers. The basis of such treatises has usually consisted of the Federal Constitution and its effect upon governmental powers and public and private rights. The Federal Constitution has been often treated historically. The conditions which gave rise to its several provisions have been exhaustively described. The personnel of the bodies which constructed it has been considered and the effect of its provisions has been carefully observed. This has resulted in an extensive bibliography of the constitutional history and development of the United States.

State constitutions have seldom been treated historically and even less frequently have they been made the subject of special treatment from a legal standpoint. There can be no doubt of the value of a carefully prepared constitutional history of a great State like New York. As stated by Mr. Lincoln in his preface, "the constitution of a free people represents in outline the beliefs, the sentiments, the enthusiasms, and the policies which the people themselves approve and illustrate in the various relations of daily life."

Under our form of government this sentiment applies especially to the constitution of a State. Such a constitution more directly affects the interests of the people than does the Federal Constitution. The State constitution gives life to institutions directly affecting the welfare of the individual, and produces results within the personal appreciation of every citizen. It follows, necessarily, that the historical treatment of the various provisions of a State constitution involves a consideration of all the events which have contributed to the

growth and development of the State and its institutions. When we think of this, it will not surprise us that Mr. Lincoln, in writing *The Constitutional History of New York*, was required to extend his work through five volumes.

The value of a work like this depends upon its accuracy and the care used by the author in handling the immense amount of material which must be consulted. A large portion of the material consists of records of conventions, legislatures and commissions, nearly all of which have been printed, and which are for the most part readily accessible. But this mass of material must be examined with discrimination and intelligent judgment, so as to bring into prominence only the influential facts. To accomplish the desired result requires patient industry, judicial intelligence and governmental experience.

Mr. Lincoln's extensive work will itself indicate the success which he has attained in meeting these requirements. The various sources of information could not have been approached without extensive labor, and the material obtained could not have been judicially handled had the author not been fitted by experience to take up the subject. Mr. Lincoln was a member of the constitutional convention of 1894, which resulted in a complete revision of the constitution of the State. He occupied an important position in this convention, and its records bear testimony to the fact that he contributed largely to the important results of that body. His work in that assembly brought him to the attention of Governor Morton, and he was by him appointed chairman of the statutory revision commission and thus became the legal adviser of the governor. He remained in this position through the administrations of Governors Morton, Black and Roosevelt. As legal adviser to the governor, he was required constantly to consider constitutional questions presented to the governor in the form of legislative bills and otherwise. This extended experience in constitutional study peculiarly fitted Mr. Lincoln to write such a work as this.

The plan of the work seems to be suited to the subject. As suggested by the author in the preface, the question might arise as to whether the history should be treated topically, developing each subject independently from the beginning, or whether a chronological order should be observed, including a separate consideration of each constitutional period. On the whole, it seems that he acted wisely in taking up each constitution separately in the order of its adoption.

This involves a consideration of the same subject in various parts of the work, and it might be said that convenience of reference would be promoted by treating each subject by itself. But the difficulty seems to have been surmounted by a carefully prepared index which unites the several discussions of the same subject.

In the first volume of the work, the constitutions are inserted in the form in which they were adopted. At the end of the sections, cross references are inserted to the same or similar sections of the other constitutions. The author then considers historically each of the constitutions.

The value and importance of this work, may be shown by a reference to a few of the subjects which are discussed. Immediately prior to the convention of 1846, disturbances had arisen in certain parts of the State, owing to difficulties existing between the proprietors of manorial grants and their tenants. The question between such proprietors and their tenants was whether the leasehold tenures should be perpetuated or the rents commuted upon fair and reasonable terms and fee simple titles given upon the payment of such a sum of money as would, if invested at a stipulated rate, produce an amount equal to the rents to be charged. The tenants, in attempting to compel a compliance with their demands, frequently resorted to force and banded themselves in resistance to the law and its officers. Such a condition naturally led to a discussion in the convention of the means by which the difficulties could be disposed of. One result of this discussion was the including in the constitution of a provision prohibiting leases of agricultural lands for terms of more than twelve years. Mr. Lincoln relates the historical facts pertaining to this land controversy, shows the development of the manorial system, and discusses the provision of the constitution relating to agricultural leases.

State aid was frequently rendered to private business enterprises during the early years of the State. This aid most frequently took the form of a loan of State credit to such enterprises as railroads and canals, engaged in internal improvement. The idea seems to have prevailed that the public benefits from the construction and maintenance of railroads was sufficient to justify an appropriation of State money or a loan of State credit to persons and corporations who were willing to undertake the building of such roads. Mr. Lincoln, in his consideration of the provision contained in the third constitution of 1846 relating to this subject, details at considerable length instances

of the rendering of such aid. And, again, in considering the result of the work of the constitutional commission of 1872, he discusses the causes which led to the adoption of the stringent constitutional prohibition against the loaning or giving of credit or money "in aid of any association, corporation, or private undertaking." It is evident that corruption must have entered into legislative grants of State aid, creating a public sentiment opposed thereto, resulting in its final elimination. The growth and the result of this sentiment are carefully shown by Mr. Lincoln in the parts of his work referred to.

The subject of prisons and prison management, including prison labor, is treated in an interesting manner. In the article on State officers, in the chapter on the convention of 1846, a brief sketch of the creation and development of the office of State prison inspector is given. This system of prison management was unsatisfactory, and the office was subsequently abolished as a result of the amendment proposed by the constitutional commission of 1872. This amendment provided for the appointment of a superintendent of State prisons, which office is continued under the present constitution. The subject of prison management was considered fully in the convention of 1867, and a similar provision was reported by that convention, but the constitution prepared by that convention was not adopted. (Vol. 2, pp. 138-140; 374-378; 532-534.)

The subject of prison labor is discussed at length in chapter twelve of the work. (Vol. 3, pp. 246-297.)

Mr. Lincoln here treats historically of the method of administering our criminal law, and shows the development of our present prison system. He deals especially with the employment of convicts and shows the development of the system as it existed prior to the adoption of the provision of the constitution of 1894, which prohibited the contracting of the labor of prisoners. While this provision restricted the sale of the products of convict labor in the open market, and thus prevented competition with outside industries, it further authorized the legislature to provide that convicts may work for, and that the products of their labor may be disposed of to, the State and the political divisions thereof. It was thus not intended that the prisoners in penal institutions should remain idle, but that the products of their labor should only be utilized by the State and its political subdivisions, thus enabling some compensation to be made by the prisoners for the expense of their maintenance while in confinement.

The subject of the qualification of voters and the conduct of elections so far as it pertains to constitutional restrictions and regulations is treated historically in an exhaustive manner. (Vol. 2, pp. 294-317.) The discussions in the convention of 1867 are referred to and the results stated. This question was further considered by the constitutional commission of 1872, and the recommendation made by that commission was subsequently adopted. The length of residence required to qualify an elector as prescribed in the amendment proposed, was substantially the same as the provision recommended by the convention of 1894, except that a prescribed residence in a town or ward was omitted by the commission, and the election district was made the unit of local residence. (Vol. 2, pp. 477-481.)

As stated by Mr. Lincoln, the constitutional convention of 1894 had little occasion to give the subject of suffrage extended consideration, although he points out the fact that the convention did discuss at considerable length the question of extending the right of elective franchise to women, and also of the restriction of such franchise to those having a prescribed educational qualification. (Vol. 3, pp. 74-80.)

The constitution of 1894 provides that boards of election officers shall be bi-partisan; that is, one-half shall belong to the political party which at the last preceding gubernatorial election cast the greatest number of votes for governor in the State, and one-half to the party which at such election cast the next greatest number of votes. In his treatment of this subject Mr. Lincoln has called attention to the provisions of previous statutes relating to the appointment or election of election boards. (Vol. 3, pp. 114-131.)

The subject of legislative organization, including the number and distribution of members of both branches of the legislature, occupies a considerable portion of volume three of the work. (Vol. 3, pp. 134-230.) This subject was deemed the most important before the convention of 1894, and it must, in fact, occupy a leading position in any constitutional discussion. Mr. Lincoln, in his treatment of the subject, has considered historically the apportionment of the members of each branch of the legislature during the colonial period, and under each of the constitutions. In his consideration of the apportionment of 1894, he has given especial attention to the several plans proposed, and shown why the plan adopted best conformed to just representation in the legislature. Mr. Lincoln was himself a member of the committee on legislative organization in the convention of 1894, and must speak with full knowledge on this question.

The subject of gambling and pool selling was prominent in the discussions of the constitutional convention of 1894. The constitution of 1821 contained a prohibition against lotteries. Prior to this time, lotteries for the purpose of raising funds for various public purposes were authorized by numerous statutes. Mr. Lincoln, in his brief historical sketch of the development of lotteries, gives a number of instances where public lotteries were authorized by legislative enactment. (Vol. 3, pp. 33-38.)

Mr. Lincoln calls attention to the interesting fact that when the convention of 1821 began its work, a public lottery system was thoroughly entrenched as a part of our social and financial policy. The governor was authorized, under the statute, to appoint and remove managers of public lotteries, and in the comptroller's office the system was recognized as a practical method of raising revenue. The evils of the system had become apparent when the convention of 1821 was called, and the constitution proposed by that convention contained a provision absolutely prohibiting the sale of lottery tickets. The subsequent constitutional conventions did not take up this subject, but in the convention of 1894 it was proposed to insert a provision prohibiting pool selling, book making, and every other kind of gambling. The discussion in that convention is considered by Mr. Lincoln and the causes which led to the adoption of the proposal stated. (Vol. 3, pp. 44-52.)

The constitution of 1894 contains an express provision to the effect that appointments and promotions in the civil service "shall be made according to merit and fitness, to be ascertained, so far as practicable, by examination, which, so far as practicable, shall be competitive." This seems to be the only constitutional provision requiring appointments in the civil service to be made according to merit and fitness. The principle of basing appointments and promotions of subordinate officers upon fitness and efficiency had, prior to that time, been embodied in legislative enactments. The position which this subject has occupied in our statute law is well described by Mr. Lincoln. (Vol. 3, pp. 313-335.)

The several topics above referred to are illustrative of many others which have been similarly treated in this work. The references made will sufficiently indicate the comprehensive character of the historical treatment of the several constitutional provisions.

A student of constitutional law must frequently be called upon to

ascertain the causes which led to the adoption of constitutional provisions. A clear statement of facts showing the development of the popular sentiment which unmistakably resulted in a constitutional declaration must materially aid the student and the lawyer in arriving at a correct interpretation of the meaning of such a declaration. It cannot be doubted that the work which Mr. Lincoln has performed in collating and treating these facts will be of great use in this respect.

A review of this work would not be complete without calling especial attention to the fourth volume which contains the constitution of 1894, including the amendments of 1899, 1901 and 1905, with annotations containing extracts from the opinions of judges relating to the several constitutional provisions. The historical importance of the written opinions of judges pertaining to the interpretation of such provisions cannot be overestimated. As stated by Mr. Lincoln in his preface to this volume, "a history of the constitution would be incomplete without some note of these decisions. On great constitutional questions, the judges usually bestow special and elaborate attention upon the inception and evolution of the particular constitutional provision under consideration, and, in many instances, decisions might be cited in which the judges have, not only made history by sustaining or rejecting statutes which have affected great public interests; but, by the construction given to the constitution, have pointed out the proper course to be pursued by the various departments of the government, and have prescribed the extent and limitations of the rights of citizens as members of the State."

In connection with the several sections of the constitution Mr. Lincoln has also included other historical facts. He states that he has done this in accordance with the plan adopted by him of placing the historical notes where they will best elucidate the subject. It is possible that this method will not appeal to a casual reader. It would occur to a person unfamiliar with the plan of the work that the historical consideration of the subject was completed in the first three volumes, where each constitution was taken up chronologically and presumably completed, once for all. It is presumed, however, that the student and the lawyer using this work will find it sufficiently valuable as an aid, to justify acquiring familiarity with the author's method of treatment.

On the whole, it must be said, Mr. Lincoln's labors have been successful. He has substantially contributed to the written history

of a great State. He has made easily available information which otherwise would have been difficult to obtain. The searcher for knowledge pertaining to the fundamental law of the several States will, after consulting the result of his labors, readily acknowledge the debt due to him.

FRANK B. GILBERT.

English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County. By SIDNEY and BEATRICE WEBB. (New York and London: Longmans, Green and Company. 1906. Pp. xxv, 664.)

A little more than three years ago (September, 1903) when Mr. and Mrs. Sidney Webb published their monograph on the *History of Liquor Licensing in England*, there was the interesting and welcome announcement in the preface that it was only a chapter from a much larger work on English local government on which they had already been engaged for four years. This section from the larger work was published in advance in 1903 because at that time a licensing bill was before Parliament; and it was felt that a better comprehension of the history and working of the licensing system might be of service in the controversy which had arisen over the revolutionary proposals of the Balfour government. The monograph of 1903 was then, and has since been, of much service; and moreover the announcement of the larger work contained in the preface awakened pleasant anticipations among students of English history—expectations which, judging from the present volumes, are to be most abundantly realized, both in the magnitude of the new work, and in the plan and style in which it is being carried out.

Not since Merewether and Stephens published in 1835, their treatise on the boroughs and municipal corporations of the United Kingdom has the history of local government in England been attempted by English writers on a scale at all commensurate with the commanding importance of the subject. It is remarkable that during the long period which has intervened between the publication of the *History of the Boroughs and Municipal Corporations*, and the issue of the first volume of Mr. and Mrs. Webb's *magnum opus*, no really comprehensive treatment of local government in England should have been attempted by English writers; and that in this period the field should have been left almost exclusively to the German scholars, Gneist and